

VEHICLE IN MOTION

AUSTIN CRIMINAL DEFENSE LAWYERS ASSOCIATION

Austin, Texas

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DWI Detection and Standardized Field Sobriety Testing

March 2013 Edition

Participant Guide



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Participant Manual

DWI Detection and Standardized Field Sobriety Testing (SFST)

Revised: 10/2015



Instructor Guide

DWI Detection and Standardized Field Sobriety Testing (SFST)

Revised: 10/2015



THREE PHASES OF DWI DETECTION

DWI DETECTION PROCESS

The entire process of identifying and gathering evidence to determine whether or not a suspect should be arrested for a DWI violation. The DWI detection process has three phases:

Phase One – Vehicle In Motion

Phase Two – Personal Contact

Phase Three – Pre -arrest Screening

Revised: DWI Detection and Standardized Field Sobriety Testing (SFST) 10/2015
Glossary of Terms Page 1 of 4

VEHICLE IN MOTION

In this phase the officer:

- observes the vehicle in operation,
- determines whether to stop the vehicle, and
- observes the stopping sequence.

VEHICLE IN MOTION:

Take a picture of the vehicle or scene, especially if the vehicle was involved in a crash.

An Officer's attention may be drawn to a vehicle by such things as:

A moving traffic violation.

An equipment violation.

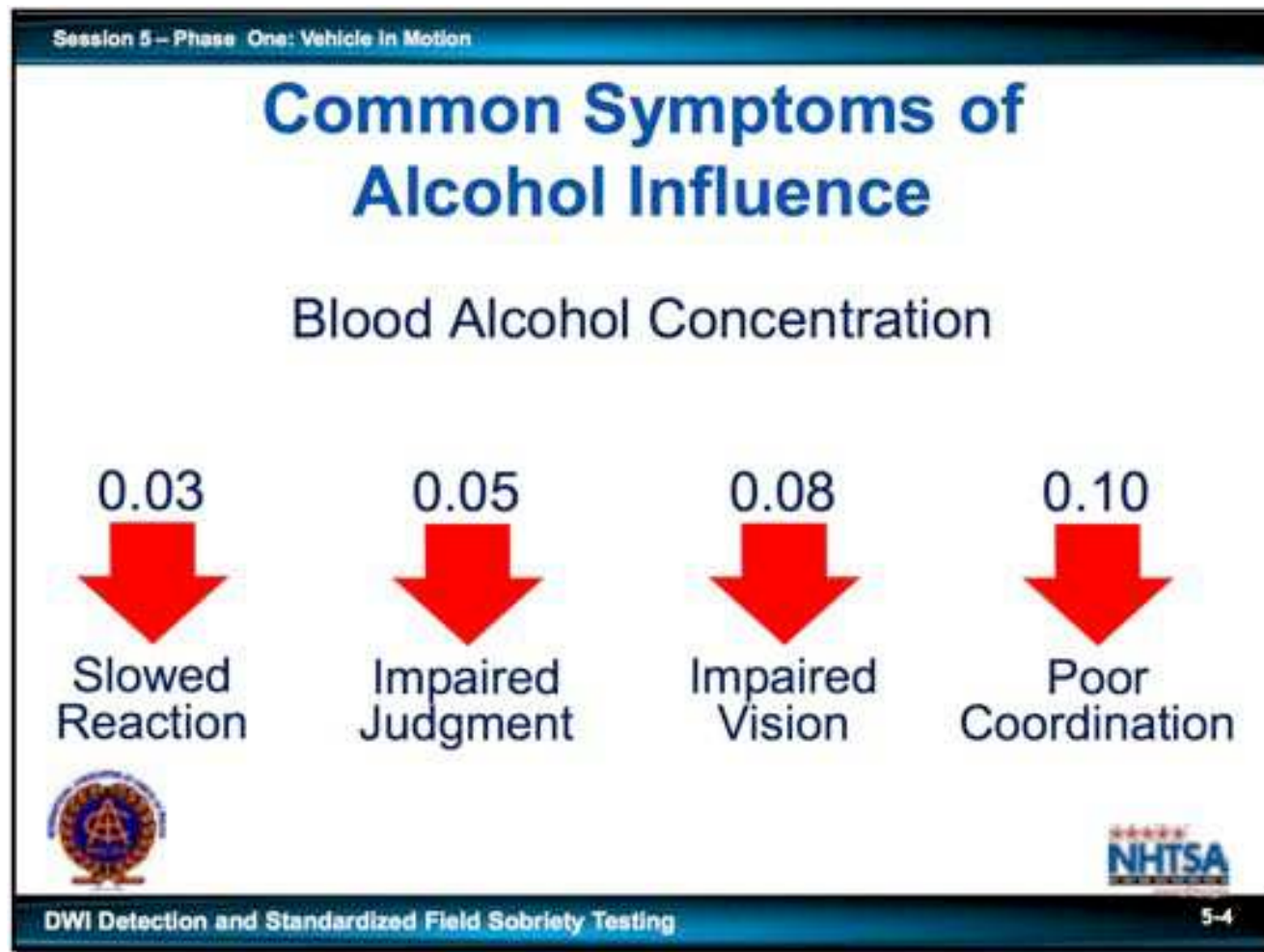
An expired registration or inspection sticker.

Unusual driving actions, such as weaving within a lane or moving at a slower than normal speed.

Evidence of drinking or drugs in vehicle.

2015 PARTICIPANT MANUAL

Drivers who are impaired frequently exhibit certain effects or symptoms of impairment. These include:



2015
Participant Manual
Sec. 5, p. 4 of 26

2015 PARTICIPANT MANUAL

TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. The Phase One tasks are _____

2. Two common symptoms of impairment are:

3. Alcohol impairs the ability to _____ among tasks.

4. Three clues reinforcing the suspicion of DWI which may be observed during the stopping sequence are:

**Slowed reactions,
Impaired judgment,
Impaired vision,
Poor coordination**

QUESTIONS ABOUT THE STOP:

You stopped Mr. Jones for **an equipment violation**, i.e., expired registration sticker/defective tail light?

Did you observe any other traffic offenses or unsafe driving?

Is it true that while operating a vehicle, “drivers who are impaired frequently exhibit certain effects or symptoms of impairment?” Participant

Manual 2015 Sec. 5 p. 4 of 26.

QUESTIONS ABOUT THE STOP:

While Mr. Jones operated his vehicle, did you observe him exhibit:

Slowed reactions or normal reactions,

Impaired judgment or normal judgment,

Impaired vision or normal vision, or

Poor coordination or normal coordination?

**WAS MR. JONES' NORMAL DRIVING EVIDENCE OF
SOBRIETY? / NORMAL / $BAC < 0.03$?**

**DID YOU INCLUDE YOUR OBSERVATIONS IN YOUR
REPORT?**

NEW LANGUAGE IN THE 2013 MANUAL:

“Drivers impaired by alcohol and/or other drugs may respond in unexpected and dangerous ways to the stop command.”

QUESTIONS ABOUT THE STOP:

After you turned on your overhead lights, did Mr. Jones come to a stop in a safe and reasonable manner?

Did he pull over at the first safe opportunity to do so?

Have you noticed that drivers impaired by alcohol sometimes respond in **unexpected or dangerous ways to the stop command**?

WAS MR. JONES' RESPONSE TO YOUR STOP COMMAND EVIDENCE OF SOBRIETY? / NORMAL?

DID YOU CHOOSE TO LEAVE THAT PIECE OF EVIDENCE OUT OF YOUR REPORT?

“Some of these cues are exhibited because the stop command places additional demands **on the driver's ability to divide attention.**

The signal to stop creates a new situation to which the driver must devote some attention, i.e., emergency flashing lights, siren, etc., demand and divert the subject's attention.”

“Signal to stop requires the driver to turn the steering wheel, operate the brake pedal, activate the signal light, etc.

As soon as officer gives the stop command, the subject's driving task becomes more complex.

If subject is under the influence, the subject may not be able to handle this more complex driving very well.”

2015 PARTICIPANT MANUAL

TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. The Phase One tasks are _____

2. Two common symptoms of impairment are:

3. Alcohol impairs the ability to _____ among tasks.

4. Three clues reinforcing the suspicion of DWI which may be observed during the stopping sequence are:

**Turn the steering wheel,
Operate the brake pedal,
Activate the signal light**

QUESTIONS ABOUT THE STOP:

After you turned on your overhead lights, did Mr. Jones:

“turn the steering wheel *normally*?”

“operate the brake pedal *normally*?”

“activate the signal light *normally*?”

Have you noticed that “if a subject is under the influence, the subject may not be able to handle this more complex driving very well?”

WAS MR. JONES’ RESPONSE TO YOUR STOP COMMAND EVIDENCE THAT HE WAS NOT “UNDER THE INFLUENCE?”

DID YOU INCLUDE THAT EVIDENCE IN YOUR REPORT?

QUESTIONS ABOUT THE STOP:

After you turned on your overhead lights, how would you evaluate Mr. Jones driving with respect to his:

Steering

Controlling accelerator

Signaling

Controlling brake pedal

Operating clutch

Operating gearshift

Observing other traffic

Observing signal lights,
stop signs, other traffic
control devices

Making decisions (whether
to stop, turn, speed up,
slow down, etc.)

Many other things

FIELD NOTES:

Field notes are only as good as the information they contain. **Reports must be clearly written and events accurately described if the reports are to have evidentiary value.**

One persistent problem with DWI incident reports is the use of vague language to describe conditions, events and statements. When vague language is used, reports **provide an inaccurate picture of what happened.**

DWI Detection and Standardized Field Sobriety Testing

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CONJUNCTIVITIS

An inflammation of the mucous membrane that lines the inner surface of the eyelids caused by infection, allergy, or outside factors. May be bacterial or viral. Persons suffering from conjunctivitis may show symptoms in one eye only. This condition is commonly referred to as "pink eye", a condition that could be mistaken for the bloodshot eyes produced by alcohol or Cannabis.

CONVERGENCE

The "crossing" of the eyes that occurs when a person is able to focus on a stimulus as it is pushed slowly toward the bridge of their nose. (See, also, "Lack of Convergence".)

CRACK/ROCK

Cocaine base, appears as a hard chunk form resembling pebbles or small rocks. It produces a very intense, but relatively short duration "high".

CUE - A reminder or prompting as a signal to do something. A suggestion or a hint.

CURRICULUM VITAE

A written summary of a person's education, training, experience, noteworthy achievements and other relevant information about a particular topic.

CYCLIC BEHAVIOR

A manifestation of impairment due to certain drugs, in which the suspect alternates between periods (or cycles) of intense agitation and relative calm. Cyclic behavior, for example, sometimes will be observed in persons under the influence of PCP.

DELIRIUM

A brief state characterized by incoherent excitement, confused speech, restlessness, and possible hallucinations.

DENDRITE

The part of a neuron (nerve cell) that receives a neurotransmitter.

DIACETYL MORPHINE

The chemical name for Heroin.

DIASTOLIC

The lowest value of blood pressure. The blood pressure reaches its diastolic value when the heart is fully expanded, or relaxed (Diastole).

DIPLOPIA

Double vision.

DISSOCIATIVE ANESTHETICS

One of the seven drug categories. Includes drugs that inhibits pain by cutting off or disassociating the brain's perception of pain. PCP and its analogs are considered Dissociative Anesthetics.

DIVIDED ATTENTION

Concentrating on more than one thing at a time. The four psychophysical tests used by DREs require the suspect to divide attention.

DIVIDED ATTENTION TEST

A test which requires the subject to concentrate on both mental and physical tasks at the same time.

DOWNSIDE EFFECT

An effect that may occur when the body reacts to the presence of a drug by producing hormones or neurotransmitters to counteract the effects of the drug consumed.

DRUG

Any substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely.

DWI/DUI

The acronym "DWI" means driving while impaired and is synonymous with the acronym "DUI", driving under the influence or other acronyms used to denote impaired driving. These terms refer to any and all offenses involving the operation of vehicles by persons under the influence of alcohol and/or other drugs.

DWI DETECTION PROCESS

The entire process of identifying and gathering evidence to determine whether or not a subject should be arrested for a DWI violation. The DWI detection process has three phases:

1. Phase One - Vehicle In Motion
2. Phase Two - Personal Contact
3. Phase Three - Pre-arrest Screening

DYSARTHIA

Slurred speech. Difficult, poorly articulated speech.

DYSPNEA et. al.

Shortness of breath.

CUE -

A reminder or prompting as a signal to do something.

A suggestion or a hint.

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***REASONABLE
SUSPICION -***

An officer must have reasonable suspicion that some crime was, or is about to be, committed before he may make a traffic stop.

Critical to that reasonable suspicion analysis is whether the stop is supported by “specific and articulable facts” at its very inception.

Terry v. Ohio, 392 U.S. 1 at 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

Reasonable Suspicion

Information that the officer either acquired or noticed after a detention or arrest cannot be considered. A detention is either good or bad at the moment it starts.

For example, a police officer who stops a driver for speeding and later discovers that he was wrong about that fact, cannot justify his stop by noting that the driver was also not wearing a seat belt if he had not seen that violation before the stop.

And that same officer cannot justify his bad stop for speeding by noting that a DVD of the stop shows that the car had a faulty tail light if the officer had not noticed the broken light before the stop.

State v. Duran, 396 S.W.3d 563, 569-70 (Tex. Crim. App. 2013)

Vehicle in Motion:

NHTSA sponsored research to identify **the most common and reliable initial indicators of DWI.**

This research identified **24 cues**, each with an associated high probability **that the driver exhibiting the cue is impaired.**

Visual Detection of Driving While Intoxicated, Harris 1980

HUMAN FACTORS, 1980, 22(6), 725-732

Visual Detection of Driving While Intoxicated

DOUGLAS H. HARRIS¹, Anacapa Sciences, Inc., Santa Barbara, California

Visual cues were identified and procedures were developed to enhance on-the-road detection of driving while intoxicated (DWI) by police patrol officers. Related research was reviewed; police officers with demonstrated effectiveness in DWI detection were interviewed; DWI arrest reports were analyzed; and a study was conducted to determine the frequency of occurrence and relative discriminability of visual cues. Based on the results, a DWI detection guide was developed and verified in a field study involving a sample of 10 law enforcement agencies located throughout the United States. Use of the guide was accompanied by a statistically significant 12% overall increase in DWI arrest rate.

INTRODUCTION

On-the-road detection of driving while intoxicated (DWI) requires the observation and interpretation of visual cues by police patrol officers. The effectiveness of DWI detection, therefore, is a function of the frequency with which patrol officers see and recognize cues indicative of DWI and the extent to which observed cues discriminate between DWI and driving while sober (DWS). What cues occur frequently enough to be useful? Which cues discriminate most accurately between DWI and DWS? This research was conducted to answer these and related questions and to provide patrol officers with a practical guide for DWI detection.

The Detection Problem

Only a very small proportion of persons DWI are arrested for this offense—only about one in 2000 (Summers and Harris, 1978). Limited enforcement resources and factors

inhibiting enforcement motivation (Arthur Young and Company, 1974; Oates, 1974) might explain the low arrest rates. However, even when persons DWI have been observed by patrol officers who were highly motivated to arrest, the arrest rate was found to be very low (Beital, Shup, and Glauz, 1975).

As determined from roadside breath-testing surveys conducted throughout the United States (Lehman, Wolfe, and Kay, 1975), about 6% of people driving at night have a blood alcohol concentration (BAC) equal to or greater than 0.10% by weight, the legal definition of DWI in most cities. About 15% have a BAC level equal to or greater than 0.05. Thus, if DWI were defined at the BAC ≥ 0.10 level, the probability of detecting DWI from a random stop would be 0.06; at BAC ≥ 0.05 , the probability would be 0.15. Visual cues that aid in discriminating between DWI and DWS can serve to increase detection probabilities above these chance levels. Thus, the key to enhanced DWI detection is determination of the relative discriminability of visual cues that are likely to be observed in association with DWI.

¹Requests for reprints should be sent to Dr. Douglas H. Harris, Anacapa Sciences, Inc., P.O. Drawer Q, Santa Barbara, CA 93102.



U.S. Department
of Transportation
National Highway
Traffic Safety
Administration



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DOT HS-805 620

THE VISUAL DETECTION OF DRIVING WHILE INTOXICATED FIELD TEST OF VISUAL CUES AND DETECTION METHODS

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Anacapa Sciences, Inc.
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Santa Barbara, California 93102

Contract No. DOT-HS-7-01538
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APRIL 1980
FINAL REPORT

This document is available to the U.S. public through the
National Technical Information Service,
Springfield, Virginia 22161

Prepared For
U.S. DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
Washington, D.C. 20590

DRUNK DRIVER DETECTION GUIDE

Percentage of nighttime drivers with BAC equal to or greater than .10

Visual Cues

| | | |
|----|--|----|
| 1 | STOPPING [WITHOUT CAUSE] IN TRAFFIC LANE | 70 |
| 2 | FOLLOWING TOO CLOSELY | 60 |
| 3 | TURNING WITH WIDE RADIUS | 60 |
| 4 | APPEARING TO BE DRUNK | 60 |
| 5 | DRIVING ON OTHER THAN DESIGNATED ROADWAY | 55 |
| 6 | STRADDLING CENTER OR LANE MARKER | 55 |
| 7 | ALMOST STRIKING OBJECT OR VEHICLE | 55 |
| 8 | SLOW RESPONSE TO TRAFFIC SIGNALS | 50 |
| 9 | HEADLIGHTS OFF [AT NIGHT] | 50 |
| 10 | SIGNALING INCONSISTENT WITH DRIVING ACTIONS | 45 |
| 11 | WEAVING | 45 |
| 12 | TIRES ON CENTER OR LANE MARKER | 45 |
| 13 | DRIFTING | 45 |
| 14 | SWERVING | 45 |
| 15 | ACCELERATING OR DECELERATING RAPIDLY | 45 |
| 16 | SLOW SPEED [MORE THAN 10 MPH BELOW LIMIT] | 45 |
| 17 | FAST SPEED [MORE THAN 10 MPH ABOVE LIMIT] | 35 |
| 18 | FAILING TO RESPOND TO TRAFFIC SIGNALS OR SIGNS | 35 |
| 19 | BRAKING ERRATICALLY | 35 |
| 20 | STOPPING INAPPROPRIATELY [OTHER THAN IN LANE] | 35 |
| 21 | TURNING ABRUPTLY OR ILLEGALLY | 30 |
| 22 | DRIVING INTO OPPOSING OR CROSSING TRAFFIC | 30 |
| 23 | DRIVING WITH VEHICLE DEFECT[S] | 30 |

Special Adjustments to the Percentages

- 2 cues Add 5 to the larger percentage.
- 3 or more cues Add 10 to the largest percentage.
- To predict BAC equal to or greater, than .05: Add 20 to the percentage obtained for drivers with BAC equal to or greater than .10.

PERCENTAGE INDICATORS

The percentage given after each cue in the Guide indicates the proportion of drivers on the average who exhibit that particular cue and who also have a Blood Alcohol Concentration (BAC) equal to or greater than .10. For example, the 70 percent following the first cue, Stopping [Without Cause] In Traffic Lane, means that out of 100 nighttime drivers who stop without cause in the traffic lane, on the average 70 will have a BAC equal to or greater than .10.

DOT HS-805 620; THE VISUAL DETECTION OF DRIVING WHILE INTOXICATED FIELD TEST OF VISUAL CUES AND DETECTION METHODS

The Detection of DWI at BAC's Below 0.10, Stuster 1997

THE DETECTION OF DWI AT BAC'S BELOW 0.10

FINAL REPORT

Submitted to:
U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Jack Stuster, Ph.D., CDE
Project Director

(2 September 1997)

ANACAPA SCIENCES, INC.
P.O. Box 519
Santa Barbara, California 93102
(805)966-1177



DOT HS 808 804

September 1997

Final Report

The Detection of DWI at BACs Below 0.10

This document is available to the public from the National Technical Information Service, Springfield, Virginia 22161.

The Detection of DWI at BAC's Below 0.10, Stuster 1997

Researchers developed a list of 24 driving cues that have been found to predict BACs of 0.08 percent or greater.

The driving behaviors were grouped into four categories:

- I. PROBLEMS IN MAINTAINING PROPER LANE POSITION;
- II. SPEED AND BRAKING PROBLEMS;
- III. VIGILANCE PROBLEMS;
- IV. JUDGMENT PROBLEMS.

In the next several slides you will see,

Illustrations of some of the 24 driving cues;

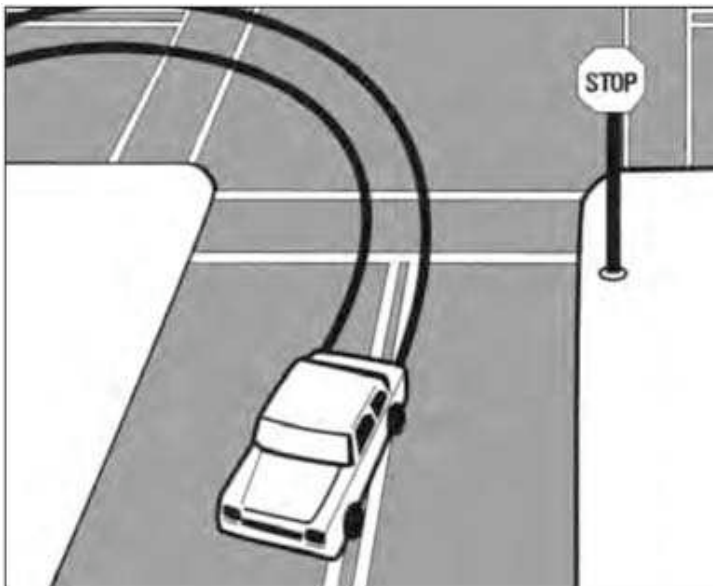
1997 Validation Study with BACs \geq 0.08 Probabilities in green.



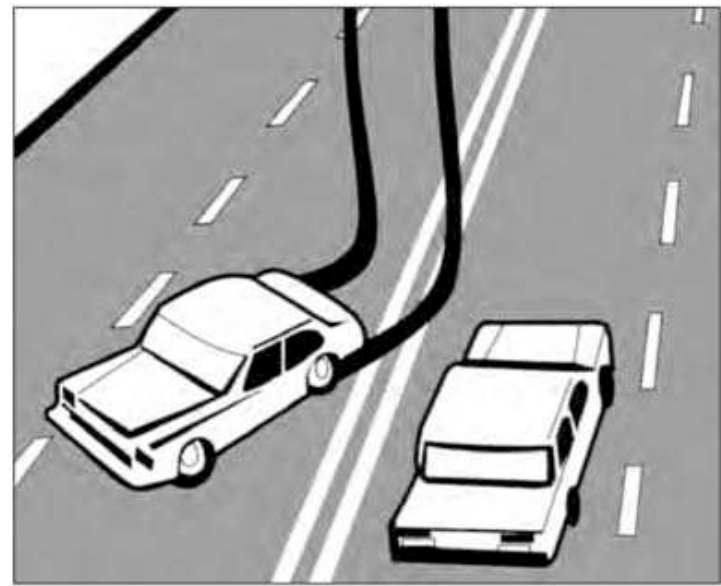
Weaving



Drifting



Turning With a Wide Radius



Swerving

Category I

PROBLEMS IN MAINTAINING PROPER LANE POSITION. [p=.50-.75]

Weaving.

Weaving across lane lines.

Drifting.

Straddling a lane line.

Swerving.

Almost striking object or vehicle.

Turning with a wide radius.

Does this mean the probability for each cue is 50% to 75%?



Category I

PROBLEMS IN MAINTAINING PROPER LANE POSITION. [p=.50-.75]

Weaving. 0.52

Weaving across lane
lines. 0.54

Drifting. 0.51

Straddling a lane line.
0.61

Swerving. 0.78

Almost striking object
or vehicle. 0.79

Turning with a wide
radius. 0.68

Individual probabilities
come from the 1997
Study.

Category I

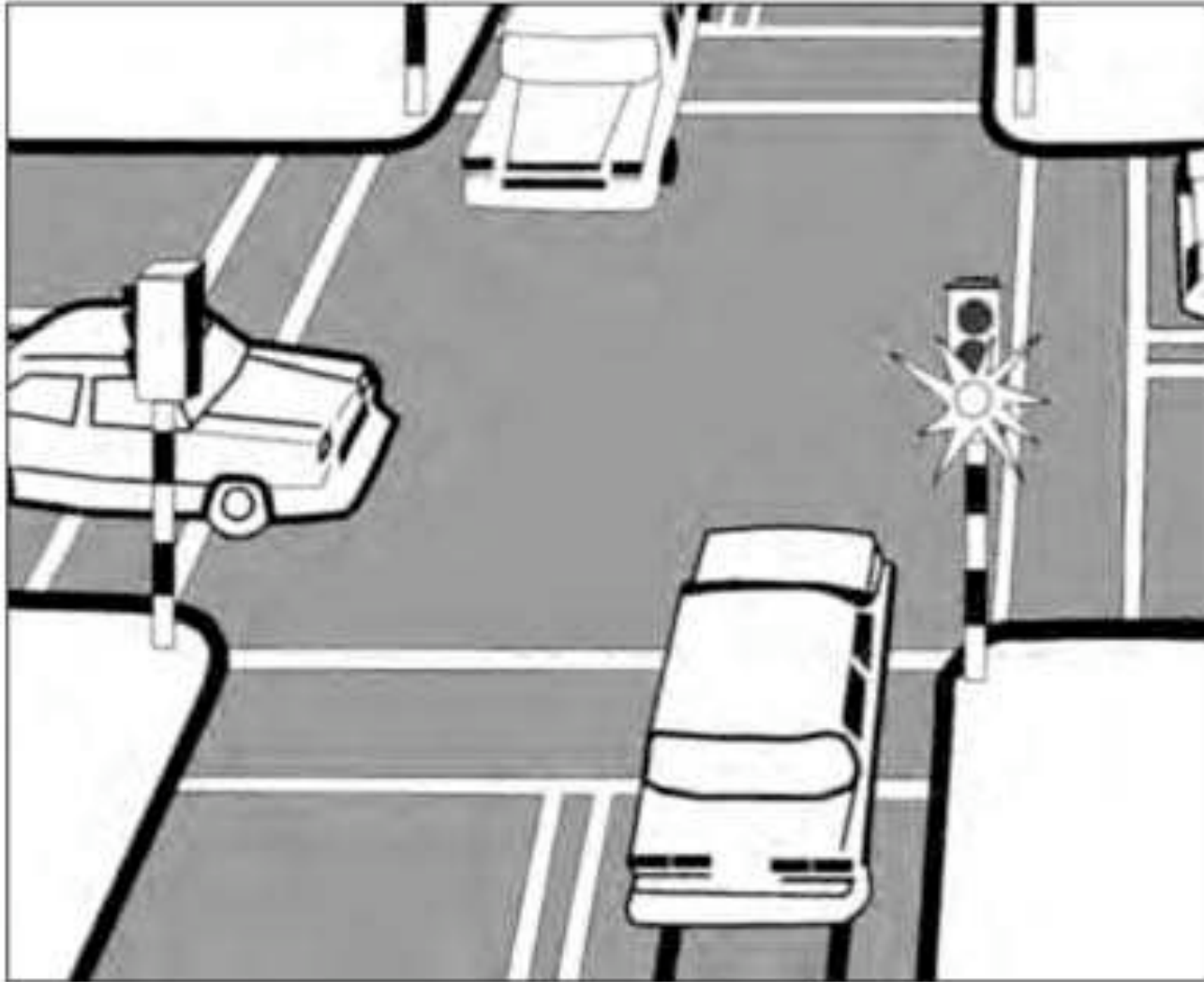
PROBLEMS IN MAINTAINING PROPER LANE POSITION. [p=.50-.75]

Weaving. 0.52

Swerving. 0.78

Drifting. 0.51

“**Weaving** is when the vehicle alternately moves toward one side of the lane and then the other. ... **Drifting** is when a vehicle is moving in a generally straight line, but at a slight angle to the lane. ... [Y]ou might observe a vehicle to **swerve**, making an abrupt turn away from a generally straight course, when a driver realizes that he or she has drifted out of position



Stopping Beyond a Limit Line

Category II

SPEED AND BRAKING PROBLEMS.

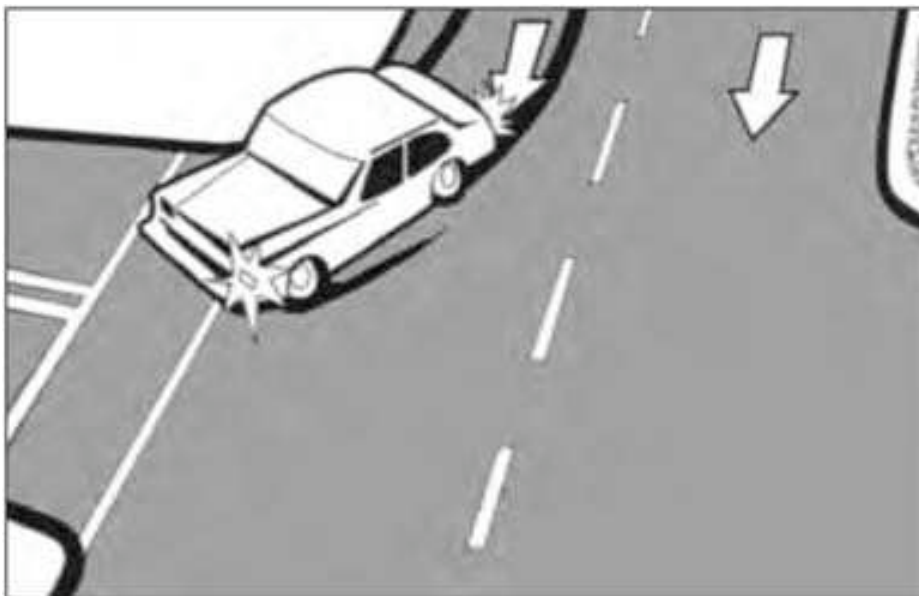
[p=.45-.70].

Stopping problems (too far, too short, or too jerky). 0.69

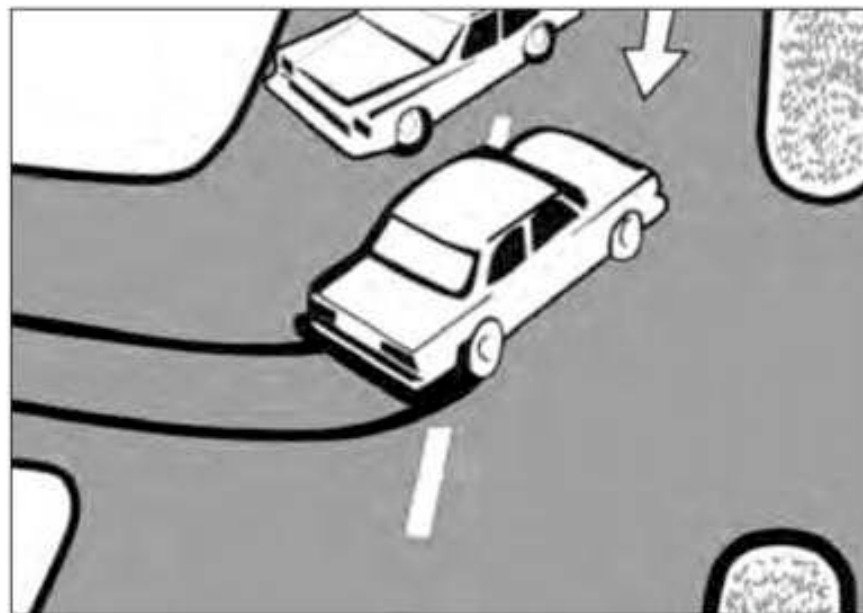
Unnecessary acceleration or deceleration. 0.70

Varying speed. 0.49

10 mph or more under the speed limit. 0.48



Signaling Inconsistent With Driving Actions



Driving Into Opposing or Crossing Traffic

Category III

VIGILANCE PROBLEMS. [P=.55-.65]

Driving without
headlights at night.
0.14

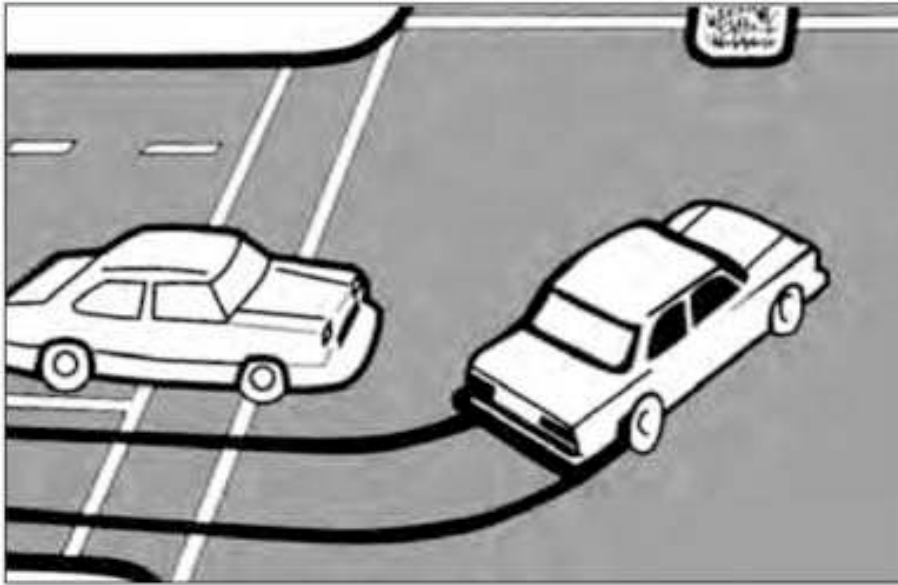
Failure to signal or
signal inconsistent with
action. 0.18

Driving in opposing
lanes or wrong way on
one way. 0.54

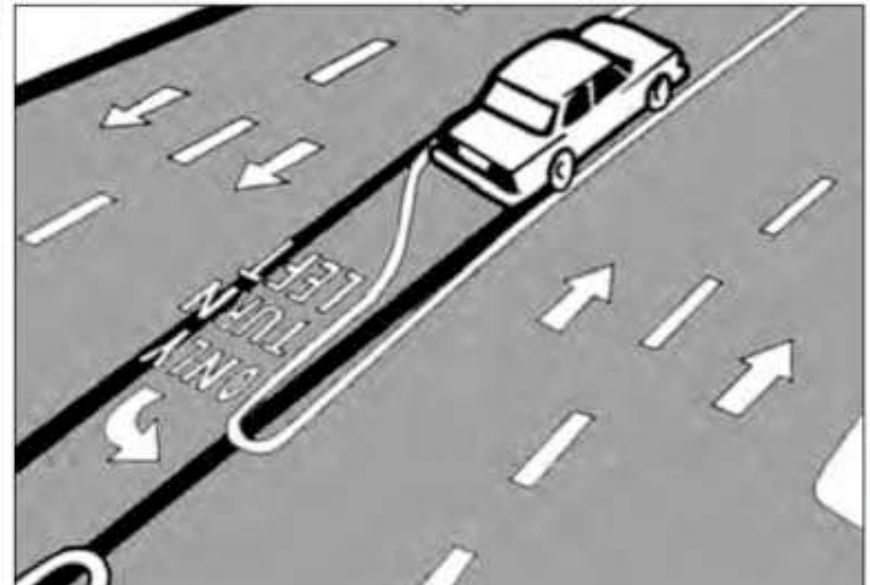
Slow response to traffic
signals. 0.65

Slow or failure to
respond to officer's
signals. 0.65

Stopping in lane for no
apparent reason. 0.55



Turning Illegally



Driving on Other Than the Designated Roadway



Appearing To Be Impaired

Category IV JUDGMENT PROBLEMS. [P=.35-.90].

Following too closely
(tailgating). 0.37

Improper or unsafe lane
change. 0.35

Illegal or improper
turn.

Illegal Turn 0.19

Improper turn (too fast, jerky, sharp, etc.) 0.50

Driving on other than
designated roadway. 0.80

Stopping
inappropriately in
response to officer
0.69

Inappropriate or
unusual behavior
(throwing objects,
arguing, etc.) 0.48

Appearing to be
impaired. 0.90
(Appearing to be drunk)

Category IV

JUDGMENT PROBLEMS. [P=.35-.90].

Eye fixation

Tightly gripping the steering wheel

Slouching in the seat

Gesturing erratically or obscenely

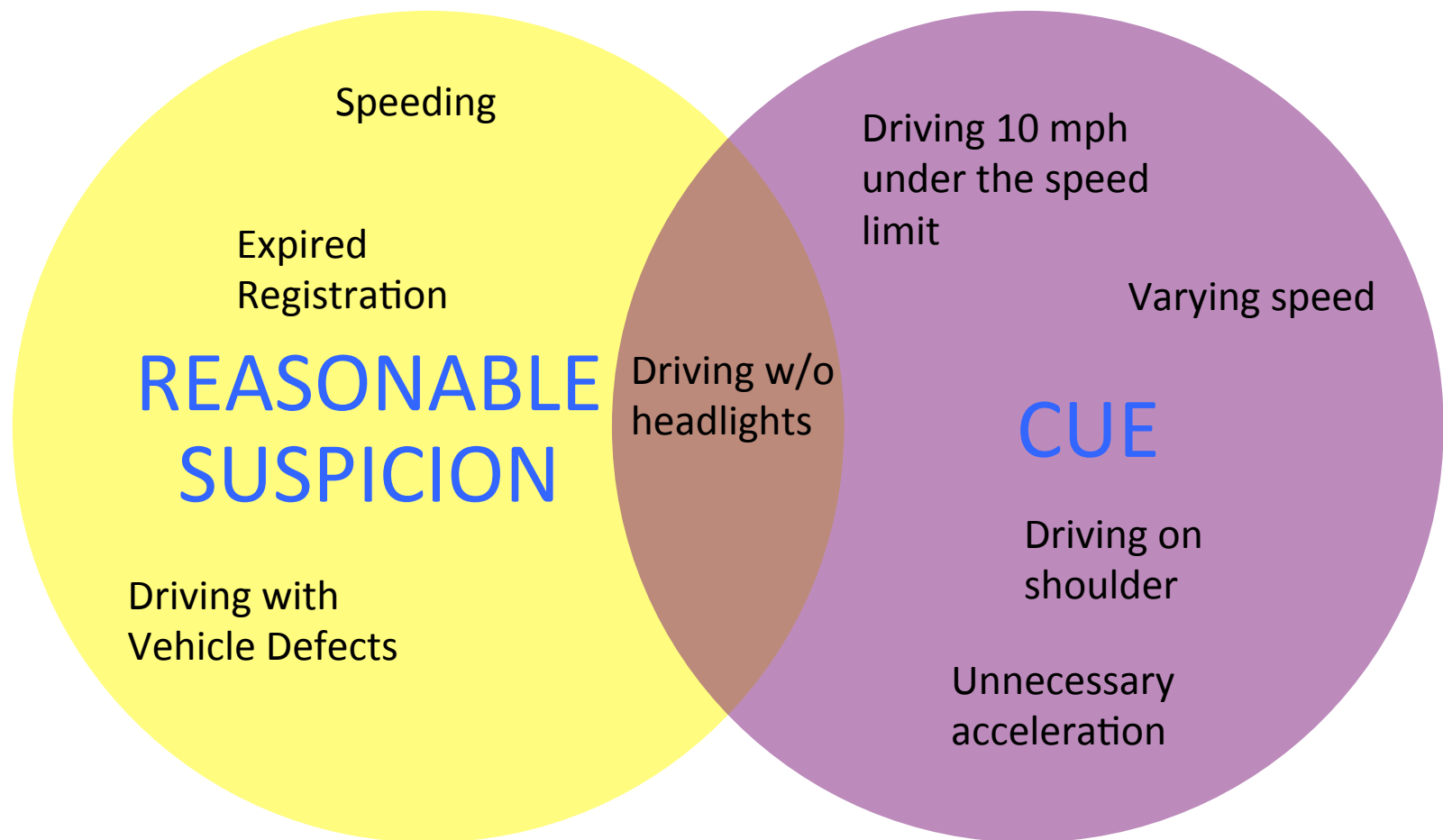
Face close to the windshield

Driver's head protruding from vehicle

NHTSA included these items in the 2006 student manual but left them out of the 2013 & 2015 manuals.

Appearing to be impaired.

Keep in Mind: Some of the 24 indicators are cues of impairment, some are legal reasons to stop, and some are both.



VIDEO RECORDING

The Texas Legislature has directed that each Texas county with a population of 25,000 or more is to purchase and maintain equipment capable of visually recording persons arrested for Driving While Intoxicated.

40 Tex. Prac., Criminal Practice And Procedure § 14:39 (3d ed.) citing Driving While Intoxicated Act, ch. 303, § 24, 1993 Tex.Gen.Laws 1568, 1605.

AV Viewer
Arbitrator 360°

The Court of Criminal Appeals held that the only sanction for officers' failure to videotape in a particular case is the admissibility of that failure at trial.

State v. Lyons, 812 S.W.2d 336 (Tex.Crim.App.1991)

OTHER REMEDIES/ STRATEGIES WHEN THE OFFICER FAILS TO RECORD

**IMPEACH THE OFFICER
WITH APD POLICY MANUAL**

APD Policy 304.1 states:
“The Austin Police
Department has
equipped designated
police units with a
Digital Mobile Audio
Video Recording
(DMAV) system. ...

One of the purposes
for the DMAV policy is
to allow APD
supervisors to review
the visual recording of
an APD Officer’s road-
side detentions and
evaluate the officer's
performance.

DMAV

Continuously Captures Video.

Operator activates DMAV Manually or Automatic.

30 second pre-record w/o audio.

Then both video and audio captured until terminated by operator.



WHEN DMAV USE IS REQUIRED

APD Policy 304.2.2(b)

Examples of when the DMAV system must be activated include, but are not limited to:

- Traffic stops.

- DWI investigations including field sobriety tests.

- Investigatory stops when the subject is on foot or in a vehicle.

IF THE OFFICER DOES NOT
RECORD THE REASON FOR
THE STOP, IMPEACH THE
OFFICER'S CREDIBILITY AT A
PRE-TRIAL HEARING

State v Rudd, 255 S.W.3d 293 (Tex.App. - Waco 2008) MTS Granted, affirmed.

Exclusion of HGN proper; although officer testified that he administered test in accordance with procedures, trial court found credibility lacking because of failure to have suspect perform **HGN test** on video.

State v Rothrock, 2010 WL 3064303 293 (Tex.App. - Austin 2010) MTS Granted, affirmed.

Review of the video makes it impossible to determine with certainty whether the wheels of Appellant's vehicle actually **crossed the left fog line** or not. Based on this inconclusive video evidence, the trial court, could have reasonably concluded that there was no traffic violation.

State v Houghton, 384 S.W.3d 441 293 (Tex.App. - Fort Worth 2012) MTS Granted affirmed.

Video-tape that defendant's vehicle briefly touched but did not **cross the double-yellow line** approximately forty-two seconds after recording began was insufficient to support finding that officer had reasonable suspicion absent any explanation from officer as to observations by him as to why defendant's maneuver was unsafe.

State v Pruneda, 2011 WL 6739575 293 (Tex.App. - San Antonio 2011) PDR Refused April 25, 2012. MTS Granted affirmed.

Officer testified that all of the traffic violations appeared on the video, but the video did not show: **near collision and/or failure to yield right-of-way; a can thrown from a vehicle; speeding; truck hitting a curb, or tires crossing over a double yellow line for several seconds.** "Video evidence of a traffic stop is obviously not required in every case, but in a case where there *is* video evidence which contradicts the officer's live testimony about the basis for the stop, it may certainly be considered by the trial court."

State v Hanrahan, 2012 WL 503658 293 (Tex.App. - Waco 2012) MTS Granted affirmed.

Officer explained that defendant **crossed the "fog line" and drove on the improved shoulder**. When asked how far over the "fog line," he responded, "I can't recall exactly. Probably just the passenger side tires probably just crossed over." The determination of whether Officer had reasonable suspicion to stop turned on the trial court's evaluation of Officer's credibility and an evaluation of the video recording within the context of Officer Bell's testimony. ... The trial court clearly did not believe the testimony, and trial court did not believe that the videotape conclusively demonstrated a violation of the transportation code.

GUSTAVE GALLENKAMP

On February 13, 2013 APD Officer Gallenkamp stopped and detained Defendant for failure to signal intent of right turn and arrested for DWI.

Gallenkamp's vehicle was equipped with a functioning DMAP but he did not record the basis for the stop.

Pretrial hearings in late 2015, Gallenkamp had no independent memory of the events from the night of the arrest.

Gallenkamp could not recall:

Whether Defendant's vehicle was in front of or behind Gallenkamp's vehicle;

Whether there were any vehicles in between their vehicles;

Where he first observed Defendant's vehicle;

Whether the flow of traffic was heavy, moderate, or light; or

Whether Defendant had just pulled out from a parking space.

When asked why he did not manually record the basis for the stop
Gallenkamp replied:
“it just never came into my mind” to do that.

This was a joint hearing with two defendants from two different cases.

Co-Counsel had a client with similarly missing video problems.

Nine additional Gallenkamp videos were not admitted but showed a pattern that Gallenkamp had failed to record the basis for the stop in other cases.

Six lawyers testified about Gallenkamp's reputation for truthfulness and honesty:

Betty Blackwell

Rick Reed

Randy Leavitt

Willie Schmerler

Chris Perri

Gerry Smith

FINDINGS OF FACT

Gallenkamp did not record the alleged violation(s) with his dash camera.

The dash camera may be activated in a number of ways, including manually.

Gallenkamp did not activate the camera until well beyond the time and place of the alleged traffic violation and even then only passively when he activated his overhead emergency lights.

| | | |
|--|---|----------------------|
| CAUSE NO. [REDACTED] | | |
| STATE OF TEXAS | X | IN THE COUNTY COURT |
| VS. | X | AT LAW NO. EIGHT |
| [REDACTED] | X | TRAVIS COUNTY, TEXAS |
| Findings of Fact and Conclusions of Law | | |
| <p>On the 26th day of October and the 7th day of December, 2015, and the 19th day of February, 2016; this court held hearings in the above-styled case. Following are the Court's Findings of Fact and Conclusions of Law:</p> | | |
| <p><u>Findings of Fact</u></p> | | |
| <p>1. Austin Police Officer Gallenkamp did not have a warrant for the seizure or arrest of defendant for an alleged traffic violation nor for driving while intoxicated in the present case.</p> | | |
| <p>2. On February 13, 2014, Officer Gallenkamp stopped defendant in the vehicle defendant was driving for allegedly failing to signal a turn from West Avenue onto W. 6th St. in Austin, Texas.</p> | | |
| <p>3. Officer Gallenkamp testified that he did not know where he was, where his vehicle was positioned, at the time he allegedly saw the traffic violation, only that it might have been on the south side of W. 6th St.</p> | | |
| <p>4. Even from that vantage point facing the point at which defendant turned onto W. 6th St., Officer Gallenkamp's dash camera could well have recorded the alleged traffic violation.</p> | | |
| <p>4. Officer Gallenkamp did not record the alleged violation(s) with his dash camera.</p> | | |
| <p>5. The dash camera may be activated in a number of ways, including manually.</p> | | |
| <p>6. Officer Gallenkamp did not activate the camera until well beyond the time and place of the alleged traffic violation and even then only passively when he activated his overhead emergency lights.</p> | | |
| <p>7. Officer Gallenkamp testified vaguely and inconsistently about his regular or irregular use of the manual button for activating the dash camera, which would automatically record even 30 seconds before the activation.</p> | | |

CONCLUSIONS OF LAW

1. There is no credible evidence that the defendant committed a traffic violation justifying his stop and seizure.
2. The State of Texas failed to meet its burden of proof— a preponderance of the evidence — that there was probable cause for a stop and/or seizure of the defendant due to the commission of an offense.
3. The State of Texas failed to meet its burden of proof— a preponderance of the evidence — that there was a reasonable suspicion that an offense had occurred, was occurring, or might be about to be committed, to justify a stop and/or seizure of the defendant.
4. All evidence from the time of the stop and seizure of defendant and his vehicle and thereafter was unconstitutionally and illegally obtained and is therefore suppressed.

8. Had Officer Gallenkamp activated his dash camera within 30 seconds of the alleged traffic violation, there would exist objective and credible evidence of the traffic violation, if any.

9. Various attorneys who testified that their opinion of Officer Gallenkamp's capacity for honesty was bad and that Officer Gallenkamp's reputation for honesty among the criminal defense community of Travis County was bad were credible witnesses.

Conclusions of Law

1. There is no credible evidence that the defendant committed a traffic violation justifying his stop and seizure.

2. The State of Texas failed to meet its burden of proof—a preponderance of the evidence—that there was probable cause for a stop and/or seizure of the defendant due to the commission of an offense.

3. The State of Texas failed to meet its burden of proof—a preponderance of the evidence—that there was a reasonable suspicion that an offense had occurred, was occurring, or might be about to be committed, to justify a stop and/or seizure of the defendant.

4. All evidence from the time of the stop and seizure of defendant and his vehicle and thereafter was unconstitutionally and illegally obtained and is therefore suppressed.

SIGNED this 24th day of March, 2016.


CARLOS H. BARRERA, Judge
County Court at Law No. Eight
Travis County, Texas

IMPROPER STOPS FOR TRAFFIC VIOLATIONS

IMPROPER STOPS



EXAMPLES OF IMPROPER STOPS:

Driving too slow;
Following too close;
Improper left turn;
Wide right turn;
Vehicle approaching
intersection;
Leming Issues - Failing
to maintain a single
lane;

Rodriguez Issues –
Causal link;
Operation Issues;
Pretext stops;
Merging from an
ending lane;
Driving on the
shoulder.

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Driving too slow. 45 in a 65 mph zone.

Traffic stops were unjustified since the respective officers had no facts other than observation of slow driving to lead to reasonable suspicion. ...

We are unwilling to find that driving in the manner which appellant did after he passed the patrol car “well within the speed limit” is suspicious activity which would create a reasonable belief that such activity is related to crime.

Viveros v. State, 828 S.W.2d 2, 4 (Tex.Crim.App.1992)

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Following too close.

(a) An operator shall, if following another vehicle, **maintain an assured clear distance between the two vehicles** so that, considering the speed of the vehicles, traffic, and the conditions of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway.

Tex. Transp. Code Ann. § 545.062 (West)

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Following too close.

Trooper testified that he saw appellant following another car at a distance that was insufficient and in violation of the statute. While this may be a permissible interpretation of the Trooper's "following too close" testimony, it does not change its **conclusive character** into specific, articulable facts.

Ford v. State, 158 S.W.3d 488, 493 (Tex. Crim. App. 2005).

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Following too close.

The Trooper only stated that Appellant was “following too close.” The record reveals an absence of any facts allowing an appellate court to determine the circumstances upon which the Trooper could reasonably conclude that Appellant actually was, had been, or soon would have been engaged in criminal activity. Instead, the trial court was presented only with a **conclusory statement** that Appellant was violating a traffic law.

Ford v. State, 158 S.W.3d 488, 493 (Tex. Crim. App. 2005).

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Following too close.

Following too closely, speeding, and being intoxicated, can be examples of such subjective determinations.

Castro v. State, 227 S.W.3d 737, 742 (Tex. Crim. App. 2007)

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Improper Left Turn. Tex. Transp. Code Ann. § 545.101(b) (West)

(b) To make a left turn at an intersection, an operator shall:

(1) approach the intersection in the extreme left-hand lane lawfully available to a vehicle moving in the direction of the vehicle; and

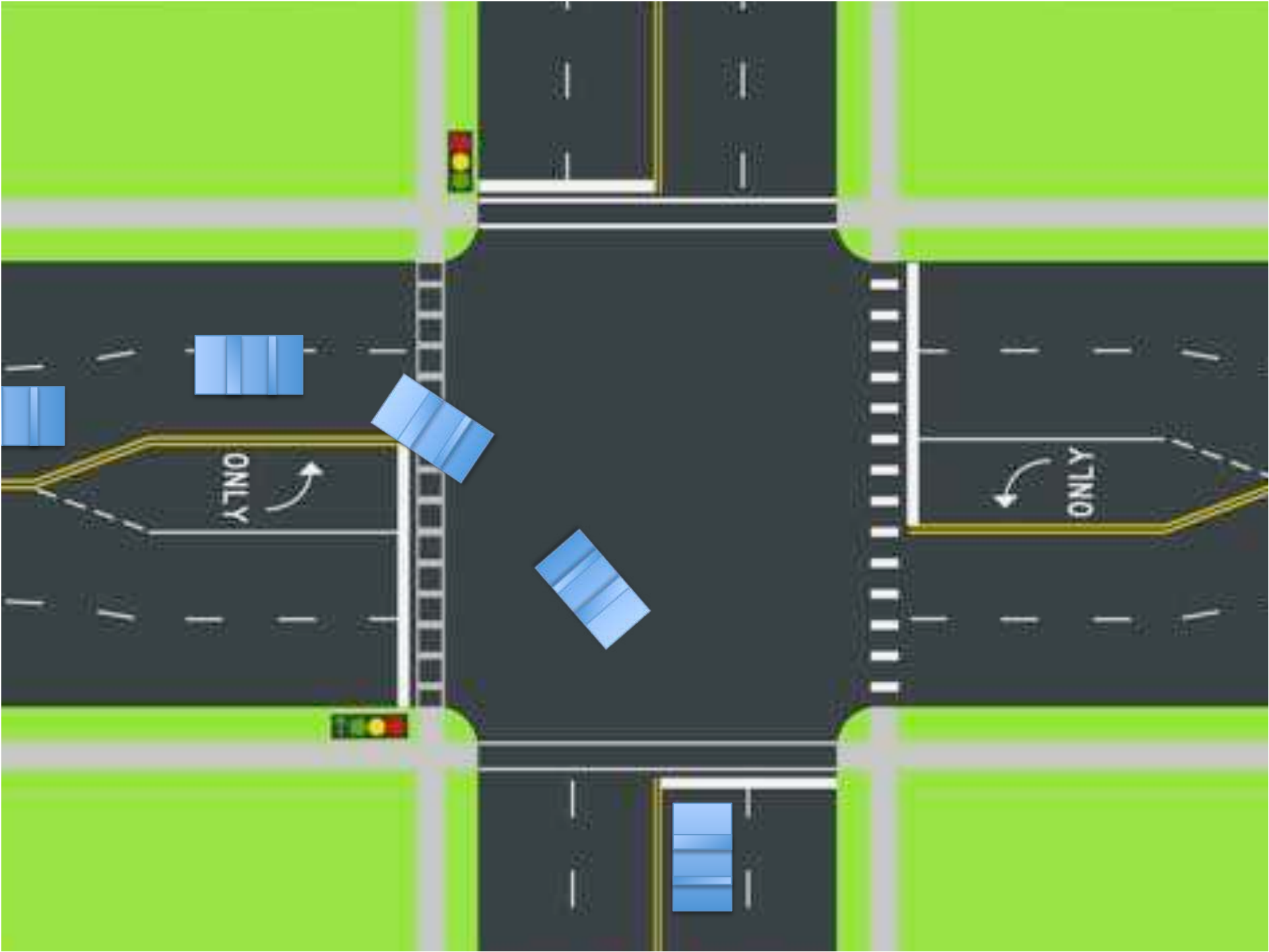
(2) after entering the intersection, turn left, leaving the intersection so as to arrive in a lane lawfully available to traffic moving in the direction of the vehicle on the roadway being entered.

(c) On a street or roadway designated for two-way traffic, the operator turning left shall, **to the extent**

State v. Obregon, 2007 WL 2390813 (Tex.App - Corpus Christi 2007)

Officer testified he conducted a traffic stop “[d]ue to that left turn. He had cut the corner a little too short; kind of veering off into the other lane. At the time there was no vehicle there....”

According to the officer, just the front wheel of the Tahoe cut, “kind of at an angle....” Officer claimed the traffic violation consisted of the act of “cutting the corner turning left.”



State v. Obregon, 2007 WL 2390813 (Tex.App - Corpus Christi 2007)

The court concluded that the evidence did not support a finding that the Officer had articulable facts sufficient to support a reasonable suspicion that appellant violated section 545.101 of the transportation code.

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Wide Right Turn.

(a) To make a right turn at an intersection, an operator shall make both the approach and the turn **as closely as practicable** to the right-hand curb or edge of the roadway.

Tex. Transp. Code Ann. § 545.101 (West)



**DEFENDANT'S
EXHIBIT**



**DEFENDANT'S
EXHIBIT**



**DEFENDANT'S
EXHIBIT**



DEFENDANT'S
EXHIBIT

1

ALR Hearing - Judge Wendy
Harvel – PBT 0.161; Blood 0.185

Gallenkamp

Stopped client for Failing to
Stop at Stop Sign and Wide
Right turn.

Video was pointing the wrong
way

Rick Reed Testified – truth &
honesty

Two passengers testified

TEXAS DEPARTMENT OF
PUBLIC SAFETY

Docket No. [REDACTED]

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

ADMINISTRATIVE DECISION

On December 3, 2014, the Defendant appeared and announced ready. The Department appeared through its attorney and announced ready. Having heard and considered the evidence, the Administrative Law Judge finds that the State Office of Administrative Hearings has jurisdiction over this cause and further finds the facts below were proven by a preponderance of the evidence:

FINDINGS OF FACT

- 1) The Department failed to prove reasonable suspicion to stop. The Defendant was driving a large truck, which made it impracticable for him to turn into the right-most lane when making a right turn. The officer's testimony about the Defendant disregarding a stop sign was not sufficient to show that the Defendant disregarded a stop sign.
- 2) The Department failed to prove probable cause to arrest. The HGN test was performed with the Defendant facing cross traffic with multiple cars crossing in front of him.

CONCLUSIONS OF LAW

Based on the foregoing, the Judge concludes the evidence was insufficient to prove the issues set out in Texas Transportation Code § 524.035 or 524.042.

ORDER

The Department's petition is denied and the Department is not authorized to suspend or deny Defendant's license.

This decision may be appealed pursuant to Tex. Transp. Code §§ 524.041 and 1 Tex. Admin. Code §§ 159.253 and 159.255.

Signed December 8, 2014.


WENDY K. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

ALR FINDINGS:

The Department failed to prove reasonable suspicion to stop.

The Defendant was driving a large truck, which made it impracticable for him to turn into the right-most lane when making a right turn.

The officer's testimony about the Defendant disregarding a stop sign was not sufficient to show that the Defendant disregarded a stop sign. Dept.'s Petition is denied.

TEXAS DEPARTMENT OF
PUBLIC SAFETY

Docket No. [REDACTED]

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

ADMINISTRATIVE DECISION

On December 3, 2014, the Defendant appeared and announced ready. The Department appeared through its attorney and announced ready. Having heard and considered the evidence, the Administrative Law Judge finds that the State Office of Administrative Hearings has jurisdiction over this cause and further finds the facts below were proven by a preponderance of the evidence:

FINDINGS OF FACT

- 1) The Department failed to prove reasonable suspicion to stop. The Defendant was driving a large truck, which made it impracticable for him to turn into the right-most lane when making a right turn. The officer's testimony about the Defendant disregarding a stop sign was not sufficient to show that the Defendant disregarded a stop sign.
- 2) The Department failed to prove probable cause to arrest. The HGN test was performed with the Defendant facing cross traffic with multiple cars crossing in front of him.

CONCLUSIONS OF LAW


Based on the foregoing, the Judge concludes the evidence was insufficient to prove the issues set out in Texas Transportation Code § 524.035 or 524.042.

ORDER

The Department's petition is denied and the Department is not authorized to suspend or deny Defendant's license.

This decision may be appealed pursuant to Tex. Transp. Code §§ 524.041 and 1 Tex. Admin. Code §§ 159.253 and 159.255.

Signed December 8, 2014.


WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

AFTERWARD:

Gallenkamp twice failed to appear for pretrial hearing in the criminal case which was then dismissed.

TEXAS DEPARTMENT OF
PUBLIC SAFETY

Docket No. [REDACTED]

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

ADMINISTRATIVE DECISION

On December 3, 2014, the Defendant appeared and announced ready. The Department appeared through its attorney and announced ready. Having heard and considered the evidence, the Administrative Law Judge finds that the State Office of Administrative Hearings has jurisdiction over this cause and further finds the facts below were proven by a preponderance of the evidence:

FINDINGS OF FACT

- 1) The Department failed to prove reasonable suspicion to stop. The Defendant was driving a large truck, which make it impracticable for him to turn into the right-most lane when making a right turn. The officer's testimony about the Defendant disregarding a stop sign was not sufficient to show that the Defendant disregarded a stop sign.
- 2) The Department failed to prove probable cause to arrest. The HGN test was performed with the Defendant facing cross traffic with multiple cars crossing in front of him.

CONCLUSIONS OF LAW


Based on the foregoing, the Judge concludes the evidence was insufficient to prove the issues set out in Texas Transportation Code § 524.035 or 724.042.

ORDER

The Department's petition is denied and the Department is not authorized to suspend or deny Defendant's license.

This decision may be appealed pursuant to Tex. Transp. Code §§ 524.041 and 1 Tex. Admin. Code §§ 159.253 and 159.255.

Signed December 8, 2014.


WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Who has the RIGHT-OF-WAY
when two vehicles approach an
intersection

at exactly the same time?

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Vehicle Approaching or Entering Intersection.

Tex. Transp. Code Ann. § 545.151 (West)

(a) An operator **approaching an intersection**:

(1) shall stop, yield, and grant immediate use of the intersection:

(A) in obedience to an official traffic-control device, including a stop sign or yield right-of-way sign; or

(B) if a traffic-control signal is present but does not display an indication in any of the signal heads; and

(2) after stopping, may proceed when the



Hearing Motion to Suppress -
Judge Wilford Flowers
Intoxilyzer - 0.133/0.136

Stopped client for Failing to Yield Right-of-Way.
Video showed motorcycle's headlight dip after
Defendant came to a stop.
MTS Granted, Case Dismissed.

WHEN DOES PRESUMED “BAD DRIVING” COUNT AS A TRAFFIC VIOLATION?

Failure to Maintain a Single Lane. Tex. Transp. Code Ann. § 545.060 (West)

(a) An operator on a roadway divided into two or more clearly marked lanes for traffic:

(1) shall drive as nearly as **practical** entirely within a single lane; **and/or ?**

(2) may not move from the lane unless that movement can be made safely.

Lemming v. State,

PD-0072-15,

2016 WL 1458242, at *4 (Tex. Crim. App. Apr. 13, 2016).

FACTS:

Dispatcher notifies Officer of a citizen's report of a vehicle on the road that was “swerving from side to side.”

Officer knew that an identified civilian witness had made the report and had observed the Jeep to be “swerving” even before the officer arrived on the scene.

Officer’s testimony and video recording show that Jeep was drifting in its lane several times, almost hitting the curb twice; *continued ...*

Leming v. State,

PD-0072-15,

2016 WL 1458242, at *4 (Tex. Crim. App. Apr. 13, 2016).

... continued

The Jeep does not clearly cross into another lane of traffic;

“Tires were on the stripes. ... [T]his is as much as may be said definitively.”

Leming v. State,



Leming v. State,



Leming v. State,



Leming v. State,

PD-0072-15,

2016 WL 1458242, at *4 (Tex. Crim. App. Apr. 13, 2016).

... continued

The Jeep does not clearly cross into another lane of traffic;

“Tires were on the stripes. ... [T]his is as much as may be said definitively.”

There was no real danger of the Jeep colliding with another vehicle in an adjacent lane.

The critical question remains:
Before it may be said that he has committed an offense, must the driver **both**:

... maintain a single lane as far as is
practical

← “Having or displaying
good judgment: sensible.”

 **AND OR**

... not change lanes without checking to
assure the maneuver can be
accomplished safely

Leming v. State,

PD-0072-15,

2016 WL 1458242, at *4 (Tex. Crim. App. Apr. 13, 2016).

“[I]t is an offense to change marked lanes when it is unsafe to do so; but it is also an independent offense to fail to remain entirely within a marked lane of traffic so long as it remains practical to do so, regardless of whether the deviation from the marked lane is, under the particular circumstances, unsafe.”

Leming v. State, PD-0072-15, 2016 WL 1458242, at *5 (Tex. Crim. App. Apr. 13, 2016).

Rejecting ***Atkinson*** v. *State*, 848 S.W.2d 813 (Tex.App.–Houston [14th Dist.] 1993, no pet.) and ***Hernandez*** v. *State*, 983 S.W.2d 867 (Tex.App.–Austin 1998, pet.

THE DISSENT: Keasler, Johnson, and Hervey.

...[T]he Court waters down reasonable suspicion to almost no standard at all by creating permissible DWI investigations from weaving alone.

The Court would hold that a single behavior, theoretically or abstractly suggesting impairment, is alone, while not against the law, sufficient for reasonable suspicion.

The Court's expansive holding that Officer Gilow had reasonable suspicion elevates weaving within the lane to establish reasonable suspicion *per se* for DWI.

Leming v. State,

PD-0072-15,

2016 WL 1458242, at *4 (Tex. Crim. App. **Apr. 13, 2016**).

If you think the courts aren't paying attention:

A police officer may initiate a traffic stop if he has a reasonable basis for suspecting a motorist has committed a traffic violation. The State does not have to establish with absolute certainty the traffic violation occurred. *Leming v. State*, PD–0072–15, 2016 WL 1458242, at *6 (Tex. Crim. App. Apr. 13, 2016).

Bates v. State, 05-15-00899-CR, 2016 WL 1733464, at *3 (Tex. App.—Dallas **Apr. 28, 2016**, no. pet. h.) (Internal citations and footnotes omitted).

Remember to distinguish *Leming* from your case:

We hold that, **on the facts of this case**, Officer had an objectively reasonable basis to justify at least a temporary detention to investigate the cause of Appellant's unusual driving ...

Civilian witness was known, not anonymous;

Civilian witness still driving behind Leming as officer drives up;

Traffic is “pretty good” / “heavy.”

Leming touches the lane dividers and nearly strikes a curb;

Video captures Leming swerve 7 times in 2 miles < 4 min.

Leming is travelling 13 mph below speed limit, then slowed down more and more as officer was behind him.

Officer Gilow was concerned that Leming may have had a “medical issue ... [such as] diabetic shock,” and then stopped the Jeep.

One more thing ...

Leming was concerned with Reasonable Suspicion to stop a driver but what if the standard is PC?

Look at *State v. Rivenburgh*, 933 S.W.2d 698 (Tex.App. - San Antonio 1996)

Officer testified that he stopped appellant for disorderly conduct and driving too slowly.

At the time appellant was stopped, “there was no further investigation to be undertaken. Either appellant had committed the offense prior to being stopped by the officer, or she had not.”

Therefore, the issue confronted by the trial court was whether Officer had probable cause to arrest appellant without a warrant.

IMPROPER ARREST FOR DWI?

***Rodriguez* Issues – No Causal Link.**

Officer stops vehicle for
Speeding - 64/55;

No other cues of intoxication;

Detains Defendant past the
time it would take to write a
ticket;

Conducts SFSTs;

WHAT'S WRONG HERE?



TDPS v. Rodriguez,

953 S.W.2d 362 (Tex.App. – Austin 1997)

This [ALR Breath Test Refusal] statute requires evidence of probable cause to initially stop the motorist as well as probable cause to detain the motorist further in order to investigate whether the motorist was driving while intoxicated.

The evidence in the record is completely silent on any causal connection between the initial stop and the subsequent field sobriety tests. Thus, while the first stop was justified because Rodriguez was speeding, the second “stop” (detaining Rodriguez to perform the field sobriety tests) was not.

TDPS v. Rodriguez,

953 S.W.2d 362 (Tex.App. – Austin 1997)

[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Citing, *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325–26, 75 L.Ed.2d 229 (1983).

Here the justified “stop” was in regard to Rodriguez's speeding violation. Absent additional evidence, there was no justification for any “stop” that exceeded what was necessary to ticket Rodriguez for speeding.

Rodriguez v. United States,

— U.S. —, 135 S. Ct. 1609, 1614 (April 21, 2015).

This case presents the question whether the Fourth Amendment tolerates a **dog sniff** conducted after **completion of a traffic stop** – driving on highway shoulder.

We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures.

A seizure justified only by a police-observed traffic violation, therefore, “become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission” of issuing a ticket for the violation.

IMPROPER ARREST FOR DWI?

Operation

Although “operating” is not defined in the statute, the Court of Criminal Appeals has held that an individual operates a motor vehicle if the “totality of the circumstances” indicates that the individual

“took action to affect the functioning of his vehicle in a manner that would enable the vehicle's use.”

Denton v. State, 911 S.W.2d 388, 390 (Tex.Crim.App.1995); see *Kirsch v. State*, 357 S.W.3d 645, 649–50 (Tex.Crim.App.2012).

IMPROPER ARREST FOR DWI?

Operation

In *TDPS v. Allocca*, 301 S.W.3d 364 (Tex.App.-Austin 2009, pet. denied)

Allocca asleep in the driver's seat, car parked in the parking lot of a closed Jiffy Lube.

The engine was running, air conditioning on, the headlights were turned off, the car was in park.

Allocca was fully reclined in the seat, and his feet were not touching the pedals.

IMPROPER ARREST FOR DWI?

Operation

The Austin Court of Appeals held police did not have probable cause to arrest Allocca for DWI because the totality of the circumstances did not establish that he had operated the car

“[T]he mere act of sitting in a legally parked vehicle while intoxicated does not necessarily establish probable cause absent some other factor, such as a recent collision or bystander reports, indicating that the accused actually drove the vehicle.”

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Pretext Stops

“A pretextual seizure, in the most general sense, is one that is effectuated for an ulterior (i.e., pretextual) motive.” *Crittenden v. State*, 899 S.W.2d 668, 671 (Tex. Crim. App. 1995).

[A]n objectively valid traffic stop is not unlawful under Article I, § 9, just because the detaining officer had some ulterior motive for making it. *Id.* at 672.

Pretextual stops are no longer prohibited. See *Whren v. United States*, 517 U.S. 806, 809-10, 116 S.Ct. 1769 (1996).

IMPROPER STOPS FOR TRAFFIC VIOLATION?

Pretext Stops *State v. Dixon*,

206 S.W.3d 587 (Tex.Crim.App. 2006),

Officers waited 3.2 miles to pull Dixon over after they first observed him make a **right turn** from a right-turn-only lane **without a signal.**

Officers found methamphetamine.

The trial court granted Dixon's motion to suppress based on a finding that the **officers did not make the traffic stop within a reasonable distance** after the alleged violation and that **the turns made were lawful.**

N.B. Hearing on MTS had no live witnesses.

continued ...

Pretext Stops

... continued

“It is clear from the hearing that the trial judge simply did not believe that the driver in this case committed a traffic offense by making a turn ... without using a signal.”

The fact that the officers waited for over three miles after the alleged violation to stop Dixon **diminishes the credibility of their claim that they stopped him for an unlawful turn ...**

The trial judge was in effect saying, “If you really thought the driver had committed a traffic offense, then why did you wait so long before pulling him over?”

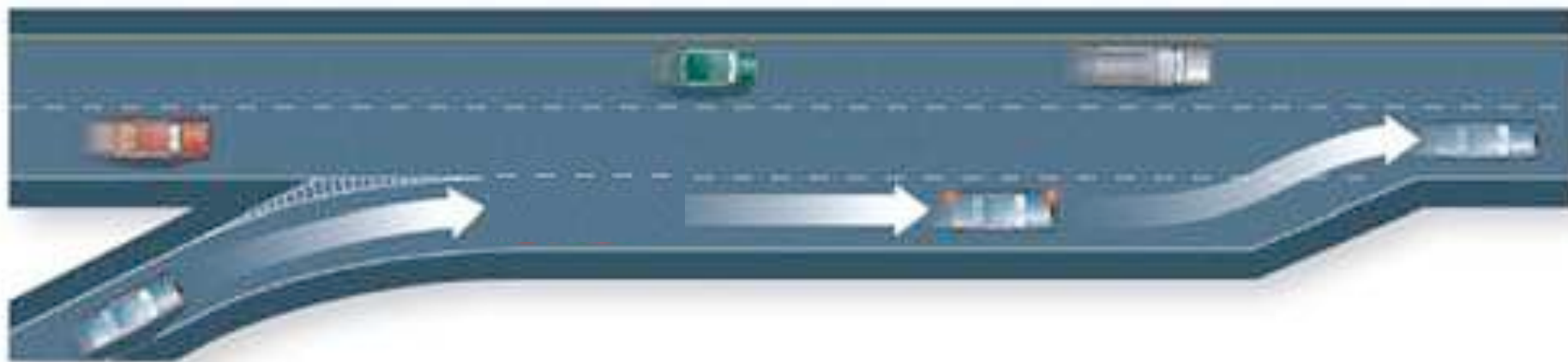
IMPROPER STOPS FOR TRAFFIC VIOLATION?

Merging from an ending lane

1



2



IMPROPER STOPS FOR TRAFFIC VIOLATION?

Merging from an ending lane

§ 545.104. Signaling Turns; Use of Turn Signals

(a) An operator shall use the signal ... to indicate an intention to **turn, change lanes, or start from a parked position.**

(b) An operator intending to **turn** a vehicle right or left shall signal continuously for not less than the last 100 feet of movement of the vehicle before the turn.

(c) ...

Mahaffey v. State, 316 S.W.3d 633, 643 (Tex. Crim. App. 2010)

“[A] movement left or right on a roadway that is neither a turn nor a lane change does not require a signal.”

“No statute provides or suggests that a driver who follows the directions of a highway traffic sign stating “Lane Ends—Merge Left” is making a “turn” under the plain language of the Transportation Code.”

IS EITHER TRUCK
LEGALLY IN THE
SHOULDER?



§ 545.058. Driving on Improved Shoulder

(a) An operator may drive on an improved shoulder to the right of the main traveled portion of a roadway if that operation is **necessary** and may be done **safely**, but only:

SEVEN APPROVED PURPOSES:

1. to **stop, stand, or park**;
2. to **accelerate** before entering the main traveled lane of traffic;
3. to **decelerate** before making a right turn;
4. to **pass another vehicle** that is slowing or stopped on the main traveled portion of the highway, disabled, or preparing to make a left turn;
5. **to allow another** vehicle traveling faster **to pass**;
6. as permitted or required by an official **traffic-control device**; or
7. to **avoid a collision**.

Lothrop v. State, 372 S.W.3d 187, 191 (Tex. Crim. App. 2012)

Merely driving on an improved shoulder is not prima facie evidence of an offense.

Thus if an officer sees a driver driving on an improved shoulder, and it appears that driving on the improved shoulder was **necessary to achieving one of the seven approved purposes, and it is done safely**, that officer does not have reasonable suspicion that an offense occurred.



Good Luck